IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

WP(C).No. 36535 of 2007(Y)

PETITIONER:

M.SURESHAN, PROPRIETOR,
M/S SARESH TEXTILES, POOTHAPARA ROAD,
AZHIKODE, KANNUR.

BY ADV. SRI.M.P.ASHOK KUMAR

RESPONDENTS:
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1. THE INDIAN OVERSEAS BANK,
KANNUR BRANCH, KANNUR.

2. THE RECOVERY OFFICER,
INDIAN OVERSEAS BANK,
KANNUR.

3. THE GENERAL MANAGER,
INDIAN OVERSEAS BANK,
CHENNAI.

BY ADV. SRI.P.B.SURESH KUMAR, SC,I.O.BANK

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) No. 36535 OF 2007 Y

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Dated this the 17th December, 2007

J U D G M E N T

The petitioner had availed of two house building loans and one commercial loan from the 1st respondent Bank. For reasons beyond his control he had committed default. It is stated that on negotiation the Bank had agreed for a one time settlement to settle the liability of Rs. 11,51,643/- by payment of Rs.9 lakhs. However, it is seen from Ext. P6 that the Bank had withdrawn the offer that was made since the petitioner had not paid the amount before 14-8-2007. The letter also shows that the further request for extension of time for settlement of the dues can be considered only after the petitioner executing the necessary revival letter with a sizable token remittance into the account.

2. It is stated by the petitioner that there were some disputes between himself and the Manager of the Bank and that led to the registration of a case against the Manager even. On account of this, petitioner says that for malafide reasons, the Manager got all

the three loans clubbed and initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Presently, Ext. P7 notice has been issued for taking possession of the residential property and it is at this stage, this writ petition has been filed challenging the proceedings initiated and for restraining the respondents from taking possession of the property.

3. Standing Counsel for the Bank points out that the Bank had to withdraw the offer by Ext. P6 for the reason that the petitioner did not honour the terms of the one time settlement scheme, nor has he paid any amount till date. It is stated that the Bank is not inclined to offer the benefit of one time settlement to the petitioner any more.

4. The petitioner now submits that his only endeavour is to save his residential property from a distress sale. Then I asked the counsel for the Bank whether the Bank had any one time settlement scheme presently in vogue. The answer to the query was that the Bank is not inclined to extend the benefit of any such scheme to the petitioner.

5. I am of the view that this stand of the Bank is unreasonable. If there is any scheme in vogue certainly as a defaulter the petitioner

is entitled to apply for the same in which event it is the duty of the Bank to consider the same on merits. Counsel for the petitioner asserts before me that there is a one time settlement scheme even now in vogue. If there is such a scheme I do not see any reason why the petitioner should not be given an opportunity to avail of the benefit of the same.

6. Accordingly, I direct that within three weeks from today, the petitioner shall deposit an amount of Rs.3,00,000/- with the 1st respondent Bank. Subject to that condition further proceedings pursuant to Ext. P7 will stand deferred. Once such remittance is made, it will be open to the petitioner to make an application before the 3rd respondent for a one time settlement in which event the 3rd respondent shall consider the application so made by the petitioner on merits and pass appropriate orders.

7. I am directing that the application should be made to the 3rd respondent for the reason that allegations have been made against the 3rd respondent in the writ petition. It is also ordered that if the petitioner rem9its Rs.3 lakhs and submits an application as above until orders are passed on such application, further proceedings pursuant to Ext. P7 will stand deferred. Needless to say that if the petitioner requests for a personal hearing before the

application is considered that will also be considered by the 3rd respondent.

ANTONY DOMINIC
JUDGE

jan/-